

APPEAL NO. 040527
FILED APRIL 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 12, 2004. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 5% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's IR, arguing that the designated doctor placed him in the incorrect Diagnosis-Related Estimate (DRE) category in the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

In his appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's 5% IR. Specifically, the claimant argues that the designated doctor improperly placed him in DRE Category II and assigned him a 5% IR from Table 72. The claimant argues that he has radiculopathy as demonstrated by electrodiagnostic testing. Thus, the claimant argues that he would properly be placed in DRE Category III and assigned a 10% IR. In support of his argument, the claimant presented a report from his treating doctor, who opined that the claimant should be assigned a 10% IR under Table 72 for DRE Category III lumbosacral spine impairment. The Commission sent a letter of clarification to the designated doctor forwarding the treating doctor's report and the claimant's electrodiagnostic studies and asked if they changed his opinion about the claimant's IR. In his response, the designated doctor stated "[t]he examinee had no complaints of radiating pain into the lower extremities nor were there positive straight leg raising, decreased reflexes or decreased sensation in the spinal dermatomes. I have no changes to make to my original assessment." On page 3-102 of the AMA Guides, the description and verification of Lumbosacral Category III (radiculopathy) states that the "patient has significant signs of radiculopathy, such as loss of relevant reflex(es), or measured unilateral atrophy of greater than 2 cm above or below the knee, compared to measurements on the contralateral side at the same location." That section also provides that the "impairment may be verified by electrodiagnostic findings." In Texas Workers' Compensation Commission Appeal No. 030091-s, decided March 5, 2003, we noted that the "AMA Guides do not state that electrodiagnostic studies showing nerve root irritation, without loss of reflexes or atrophy, constitutes undeniable evidence of radiculopathy." Accordingly, we cannot agree that the designated doctor improperly applied the AMA Guides in placing the claimant in DRE Category II for his lumbosacral

impairment instead of DRE Category III. As such, the hearing officer likewise did not err in giving presumptive weight to the designated doctor's 5% IR.

The hearing officer's decision and order are affirmed.

In its response to the claimant's appeal, the carrier states that the information contained in Hearing Officer's Exhibit No. 2 is incorrect. According to the information provided in the response, the true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica L. Ruberto
Appeals Judge